
(2007) 01 PAT CK 0191
In the Patna High Court
Case No : CWJC No's. 12794 of 2000

Md. Manzoor Alam and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-01-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 309

Citation : (2007) 2 PLJR 283

Hon'ble Judges : J.N. Bhatt, C.J

Bench : Single Bench

Advocate : S.P. Mukherjee, Dr. S.N. Jha, Ganesh Pd. Singh, P.N. Shahi, Dhruv Mukherjee, S.B. Mangalam, A. Rahman, Jai Prakash Singh, Naresh Prasad, Jyoti Sharan, Akashdeep, Bijay Kr. Pandey, Alok Agrawal, Rajendra Kr. Jain, for the Appellant; Mahesh Pd. Singh, Archana Prasad, M. Rukhaiyar, Anil Kr. Sinha, Lal Babu Singh, Nirmala Kumari, Bijay Kr. Sinha, Suresh Mishra, Yashwant Kr. Chaman, for the Respondent

Judgement

Dr. J.N. Bhatt, C.J.—In this group of 84 writ petitions under Article 226 of the Constitution of India, the main point and prayer, which has been placed in focus, has been for absorption, permanency or regularization in respect of employees of the State Government working in the Public Health and Engineering Department, the Rural Development Department, the Road Construction Department, the Forest Department and the Rural Engineering Department. In most of the cases of this group, the regularization etc. is sought on Class IV post and in few cases on Class III post, also. Before the merits of the cases are considered, let it be highlighted that upon the joint request of the learned Counsel appearing for the parties this group of petitions is taken up simultaneously and is being disposed of by this common judgment as in most of the cases identical issues are involved.

2. This Court has heard the learned Counsel appearing for the parties. The factual matrix of all the cases have been examined. We have, also, taken into consideration the relevant proposition of law. It has been submitted that, it is really, pity that persons, who have been working in the State Government

Departments on different nomenclatures, like, Daily Wagers, Temporary, Contract Basis and Work Charge, have knocked the door of justice for permanency, absorption or regularization on class-III & IV posts in this group of matters.

3. It is, rightly, jointly submitted that it will not be necessary, as well as, expedient to articulate the facts of each case since the common questions are involved regarding permanency, absorption and regularization on regular posts so that they could earn the service benefits of the coveted government employment.

4. The following propositions and contentions have been advanced by the learned Counsel appearing for the parties:

(1) That the petitioners are entitled to be regularized on regular posts as for no fault of theirs they have been suffering and have remained deprived of the benefits and fruits of the public employment.

(2) That the petitioners have been working in most of the cases since long and in some of the cases for more than 2 decades and they should be regularized as, otherwise, it would tantamount to exploitation of labour force.

(3) That some of the departments of the State Government have regularized the services of some of the juniors to some of the petitioners ignoring their claim, which, as such, has resulted into great injustice.

(4) That some of the petitioners despite having been regularized under the Government Scheme made and evolved from time to time, have, also, been deprived of public employment either by termination or not regularizing them.

(5) That some of the petitioners despite having worked in the government departments and despite the principle that one, who works must be paid, have not been paid the arrears under one or the other guise.

(6) That in some of the cases similarly situated persons because of their godfather have been regularized, whereas, some of them have been denied. This creates a great sense of not only frustration but also exploitation.

(7) That in some of the petitions earlier the directions have been given by the competent authority, which have attained finality, but the same could not have been re-considered by the government and despite that some of them have been terminated and some of them have not been regularized, which is, also, creating a great sense of injustice in the poor class of society.

(8) That in some of the petitions it is stated that the government departments have passed an order for conversion to a higher status in terms of Service Recruitment Rules and Service Conditions made by the State under Article 309 of the Constitution of India but the same is not being provided to them.

(9) In some of the cases, in case of Casual Workers of Work Charge persons, there have been revised conditions of service for them and despite that the

government is not giving such benefits to those, who are entitled under its own Scheme.

(10) It is, also, emphasized that in some of the cases poor persons and widows have been exploited and they have been forced to work on the same status without conferment of permanency, absorption or regularization on the regular posts.

(11) That if the petitioners were not regularized at this stage there will be great loss to them as they are out of employment market because of age bar and they are likely to be put to starvation.

(12) That the government ought to have considered the cases of some of the petitioners as they are governed by the Industrial Disputes Act, wherever, it is applicable and as in some cases the petitioners have completed the requisite period of 240 days.

(13) That unpaid salaries should be directed to be paid immediately with interest to those employees who have been deprived of even the benefits of the payment of salary.

(14) That it is, however, further, fairly, submitted that in the light of observations made in paragraphs-45 & 53 Paras 36 and 44 of PLJR of the decision of the Hon"ble Apex Court rendered in the case of Secretary, State of Karnataka and Ors. vs. Umadevi (3) and Ors, (2006)4 SCC 1 [: 2006(2) PLJR (SC)363], the government should consider the cases of the petitioners through the specially constituted committee.

(15) In some of the cases, it is brought to our notice that some of the petitioners have, now, retired. Their cases shall, also, be considered and if they are found entitled to be regularized then all consequential benefits including the pensionary benefits will be considered on that basis.

5. As against that, the learned Counsels appearing for the Government have placed reliance on the principles and celebrated proposition of law expounded by the Constitution Bench of the Hon"ble Apex Court in the case of Secretary, State of Karnataka and Ors. vs. Umadevi (3) and Ors., (2006)4 SCC 1[:2006(2) PLJR (SC)363], and have submitted that the observations made in the said judgment, particularly, in paragraphs-45 & 53 (Ed.--Paras 36 and 44 of PLJR) are relevant and pertinent for the purpose of consideration and regularization of the petitioners" cases. Even the petitioners in some of the cases have placed reliance on those observations.

6. It is in these context, it would be expedient to re-produce the materials observations and directions as contained in paras-45 & 53 (Ed.--Paras 36 and 44 of PLJR) of the judgment in the case of Secretary, State of Karnataka and Ors. (supra), which read here-as-under:

"While directing that appointments, temporary or casual, be regularized or made

permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time, it is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain--not at arm's length--since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the Court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that (he employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution."

"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa State of Mysore vs. S.V. Narayanappa*, (1967)1 SCR 128 *R.N. Nanjundappa R.N. Nanjundappa vs. T. Thimmiah*, (1972)1 SCC 409 and *B.N. Nagarajan B.N. Nagarajan vs. State of Karnataka*, (1979)4 SCC 507 and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on

merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any, already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

7. Our attention has, also, been invited to the latest two Division bench judgments and one Single Bench judgment of this Court, which are as under:

i) LPA. No. 946 of 2003: The State of Bihar & Ors. vs. Purendra Sulan Kit with analogous cases, decided by the Division Bench of this High Court on 26th June, 2006, which is reported in 2006(3) PLJR 386.

ii) LPA. No. 1211 of 2005: The State of Bihar & Ors. vs. Bipin Prasad Singh with analogous cases, decided by the Division Bench of this High Court on 22nd November, 2006 (Ed.--Reported in 2007(1) PLJR 351).

iii) CWJC. No. 7539 of 2000: Chandeshwar Rai vs. The State of Bihar & Ors., and its Batch cases, decided by the Single Bench of this High Court on 4th December, 2006.

8. The consensual submissions, therefore, are that the cases of the petitioners may be directed to be decided within a limited period of time by a Special Committee to be constituted by the Chief Secretary, Government of Bihar, with necessary directions.

9. Upon consideration of the overall factual profile emerging from the record of this 86 writ petitions under Article 226 of the Constitution of India, as well as, the aforesaid proposition of law raised by the learned Counsel for the petitioners and, also, bearing in mind the relevant proposition of law emerging in the Service Jurisprudence, we are of the view that the ends of justice will be satisfied if the following directions are given:

i) The Chief Secretary, Government of Bihar, is directed to constitute a Committee of three Secretaries within a period of 2 months from today to examine the manner and mode and the modus operandi of appointments whether they are in consonance with the Recruitment Rules and Recruitment Procedure or not keeping in mind the individual case of each petitioner?

ii) The Committee shall consider individual case after giving an opportunity of hearing to the affected employees and reach to a decision as to the nature of

appointment whether legal or illegal, regular or irregular, valid or invalid?

iii) Needless to reiterate that the exercise of the regularization if requires in the light of the aforesaid judgment of the Hon''ble Apex Court, as well as, our directions, shall be a one time measure for the whole departments.

iv) The said exercise by the Committee is directed to be completed within 5 months and in the event of any necessity it will be open for the concerned party to seek extension of time by taking leave from this Court.

v) The Committee will, obviously, take decision in the light of the aforesaid observations made in paras 45 & 53* of the Constitution Bench judgment in the case of Secretary, State of Karnataka (supra), which are quoted here-in-above and, particularly, in the light of paragraph-53 Paras 36 and 44 of PLJR of the said judgment.

vi) The Status quo as on today shall be maintained and earlier rejection of the application will not come in the way of consideration in terms of our directions as aforesaid.

After taking into consideration the aforesaid discussions and on the foregoing grounds, this group of writ petitions under Article 226 of the Constitution of India shall stand disposed of, accordingly, without any order as to cost. Notice is discharged.